

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1372 OF 2006.

Shabbir Ah.Ab.Raheem Hakeem & anr. ... Petitioners.
Versus.

Sajeda w/o.Abdul Hafiz & anr. ... Respondents.

Shri N.R.Bubna for the Petitioners.

Shri Anilkumar K.Patil for the Respondents Nos.1 and 2.

CORAM : ABHAY S.OKA, J.

DATED : 19th June, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. Considering the nature of the impugned order and the facts and circumstances of the case, the petition is taken up for final hearing at admission stage. The Petitioners are the original Plaintiffs, who filed a suit for possession of the suit property more particularly described in paragraph 1 of the plaint. A money decree was also prayed for on account of loss of profit. A prayer for permanent injunction was also incorporated in the suit. The Respondents (original Defendants) applied under section 8 of the Bombay Court Fees Act, 1959 read with Rule 11 of Order VII of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that the suit was not valued properly for the purpose of Court fees and jurisdiction and the correct valuation ought to have been more than Rs.10 lakhs as per the prevailing market value of the

suit property. It appears that the trial Court framed a preliminary issue of jurisdiction. The said issue along with the application taken out by the Petitioners under Order XXXIX Rule 2A of the said Code for penalising the Respondents were heard together. By the Judgment and order dated 29th September 2005, the learned trial Judge held that the suit ought to have been valued at Rs.8,00,000/-. The learned trial Judge, therefore, ordered return of the plaint for presentation to the proper Court. The learned trial Judge held that the Respondents have committed breach of the order of temporary injunction. The learned trial Judge, therefore, penalised the Respondents by directing them to deposit costs of Rs.3000/- within two weeks failing which the Respondents were directed to suffer simple imprisonment for two weeks in civil prison. There was an Appeal preferred by the Petitioner to the District Court for challenging the said Judgment and order. The Respondents preferred cross objection for challenging that part of the order of the trial Court by which the Respondents were held guilty of committing breach of the order of temporary injunction. By the Judgment and order dated 10th January 2006, the learned Adhoc Additional District Judge dismissed the Appeal and dismissed the Cross Objection. It is not in dispute that the Respondents have deposited costs of Rs.3000/- as directed by the trial Court and the Respondents have

not challenged that part of the impugned order of the District Court by which the Cross Objection was dismissed.

2. The submission of the learned Advocate for the Petitioners is that without considering the documentary evidence placed on record, the learned trial Judge has jumped to the conclusion that the market value of the suit property on the date of institution of the suit was not less than Rs.8 lakhs. He invited my attention to the Judgment of the Appellate Court in which the Appellate Court has placed reliance on the valuation made of the suit between the Respondents and one Kavita Bai. The learned Advocate for the Petitioners submitted that the approach of both the Courts is completely erroneous and there is no proper enquiry held as contemplated by section 8 of the said Act of 1959. The learned Advocate for the Respondents pointed out that the Petitioners have themselves relied upon the market value of similar properties in the ready reckoner prepared by the State Government. He submitted that no interference is called for with the impugned orders.

3. I have considered the submissions and have perused the impugned order. The trial Court has not at all recorded any reasons for coming to the conclusion that the market value of the suit property was not less

than Rs.8 lakhs. The Petitioners has referred to the market value mentioned in the ready reckoner. The Petitioners have relied upon the rates mentioned in the ready reckoner and especially the rate of Rs.1000/- per square meter as mentioned in the chart prepared by the Government. The Appellate Court observed that the skeleton of a construction was already existing on the suit property and therefore, the said rate cannot be applied.

4. A perusal of the impugned orders show that the Courts have completely overlooked the concept of market value found in the said Act of 1959. Section 8 of the said Act of 1959 contemplates an enquiry. It is a settled law that the rates mentioned in the ready reckoner prepared for the purposes of the provisions of the Bombay Stamp Act by itself is no evidence of market value. The trial Court has not at all recorded any reasons for coming to the conclusion that the market value of the suit property was not less than Rs.8 lakhs. The Appellate Court has referred to the rates of market value mentioned in the ready reckoner. The Petitioners have relied upon rates mentioned in the ready reckoner and especially the rate of Rs.1000/- per square meter for an open site. The Appellate Court observed that a skeleton of the construction was ready on the suit property and therefore, the said rate cannot be applied.

5. Assuming that there are certain documents placed on record showing market value of the properties in the locality of the suit property, I find that no evidence has been led regarding the location and nature of the said properties. The issue regarding the valuation for Court fee and jurisdiction has been dealt with by both the Courts below in a most unsatisfactory manner. The issue is required to be decided on the basis of the factual aspects. Therefore, that part of the impugned orders by which the correct valuation of the suit property is determined and the plaint is ordered to be returned will have to be quashed and set aside and the suit will have to be remanded to the trial Court for deciding the issue of jurisdiction, which is already framed as a preliminary issue. The issue will have to be decided after holding a proper inquiry.

6. Hence the following order is passed:

(i) The impugned Judgments and orders insofar as it relates to finding on issue of jurisdiction and issue of valuation of the suit stand set aside and the suit is remanded to the trial Court.

(ii) The trial Court will hold an inquiry under section 8 of the Bombay Court Fees Act, 1959

after giving an opportunity to both the parties to lead oral and documentary evidence.

(iii) After holding an inquiry as aforesaid, the trial Court will proceed to decide the preliminary issue of jurisdiction which is already framed.

(iv) The aforesaid exercise shall be completed by the trial Court as expeditiously as possible and preferably within a period of six months from today.

(v) All contentions of the parties in that behalf are expressly kept open.

Judge.